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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**  
**SAN FRANCISCO DIVISION**

13 JAMES GROSS, individually and on behalf of  
14 all others similarly situated,

15 *Plaintiff,*

16 v.

17 SYMANTEC CORPORATION, a Delaware  
18 corporation, and PC TOOLS, LTD., an Irish  
19 limited liability company,

*Defendants.*

Case No. 3:12-cv-00154-CRB

**PRELIMINARY APPROVAL ORDER**

Judge: Honorable Charles R. Breyer  
Action Filed: January 10, 2012

1 This matter having come before the Court on Plaintiff's motion for preliminary approval  
2 (the "Motion for Preliminary Approval") of a proposed class action settlement of the above-  
3 captioned action (the "Action") between Plaintiff James Gross and Defendants Symantec Corp.  
4 and PC Tools, Ltd. (collectively, "Defendants"), pursuant to the Parties' Stipulation of Class  
5 Action Settlement (the "Agreement") and the Addendum to Stipulation of Class Action Settlement  
6 (the "Addendum"), and having duly considered the papers and arguments of counsel, the Court  
7 hereby finds and orders as follows:

8 1. Unless defined herein, all defined terms in this Order shall have the respective  
9 meanings set forth in the Agreement.

10 2. The Court has conducted a preliminary evaluation of the Settlement set forth in the  
11 Agreement for fairness, adequacy, and reasonableness. Based on this preliminary evaluation, the  
12 Court finds that (i) there is cause to believe that the Settlement is fair, reasonable, and adequate,  
13 and within the range of possible approval, (ii) the Settlement has been negotiated in good faith at  
14 arms-length between experienced attorneys familiar with the legal and factual issues of this case,  
15 and (iii) the notice of the material terms of the Settlement to Settlement Class Members for their  
16 consideration and reaction is warranted. Therefore, the Court grants preliminary approval of the  
17 Settlement.

18 3. Pursuant to Federal Rule of Civil Procedure 23(b)(2) and (b)(3), and for settlement  
19 purposes only, the Court conditionally certifies the proposed Settlement Class, consisting of:

20 All individuals and entities residing in the United States and its territories that, prior  
21 to the date of this Order, purchased from an authorized seller a license to use any of  
22 the following software in the United States and its territories: PC Tools Registry  
Mechanic and PC Tools Performance Toolkit released since June 1, 2007, and  
Norton Utilities 14.0 through 16.0.

23 4. For settlement purposes only, the Court hereby preliminarily approves the  
24 appointment of Plaintiff James Gross as Class Representative.

25 5. For settlement purposes only, the Court hereby preliminarily approves the  
26 appointment of Jay Edelson, Rafey S. Balabanian, Benjamin H. Richman, and Chandler R. Givens  
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1 of Edelson LLC, as Class Counsel.

2           6.       On October 4, 2013 at 10:00 a.m., or at such other date and time later set by Court  
3 Order, this Court will hold a Fairness Hearing on the fairness, adequacy, and reasonableness of the  
4 Settlement and to determine whether (i) final approval of the Settlement should be granted, (ii)  
5 Class Counsel's application for attorneys' fees and expenses, and an incentive award to Plaintiff,  
6 should be granted, and in what amount, and (iii) a portion of the maximum allowable Fee Award  
7 should be designated for cy pres distribution, and in what amount. No later than the date fourteen  
8 (14) days prior to the date for Settlement Class Members to comment in support of or in opposition  
9 to the Settlement (as set forth below), Plaintiff shall file his papers in support of Class Counsel's  
10 application for attorneys' fees and expenses, and an incentive award to him as Class  
11 Representative. No later than the date fourteen (14) days prior to the date for Settlement Class  
12 Members to comment in support of or in opposition to the Settlement, the Parties shall jointly  
13 submit to the Court a list of proposed recipients of any potential cy pres distribution, including any  
14 proposals for allocation among cy pres recipients. No later than the date twenty-eight (28) days  
15 prior to the Fairness Hearing, Plaintiff must file his papers in support of final approval of the  
16 Settlement and in response to any objections. Defendants may (but are not required to) file papers  
17 in support of final approval of the Settlement, so long as they do so no later than the date twenty-  
18 eight (28) days prior to the Fairness Hearing.

19           7.       Pursuant to the Agreement, Epiq Systems is hereby appointed as Settlement  
20 Administrator and shall be required to perform all the duties of the Settlement Administrator as set  
21 forth in the Agreement and this Order. To aid in the efficient submission of Claim Forms, the  
22 Agreement provides for Settlement Class Members to submit Claim Forms online without the need  
23 for a manual signature. However, by submitting an online Claim Form, such Settlement Class  
24 Members shall be bound to the same extent as if they had used a manual signature.

25           8.       The Court approves the proposed Notice Plan for giving direct notice to the  
26 Settlement Class by e-mail and establishing a Settlement Website, as more fully described in the  
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1 Agreement. The Notice Plan, in form, method, and content, complies with the requirements of  
2 Rule 23 and due process, and constitutes the best notice practicable under the circumstances. The  
3 Court hereby directs the Parties and the Settlement Administrator to complete all aspects of the  
4 Notice Plan no later than twenty-eight (28) days following the entry of this Preliminary Approval  
5 Order and in accordance with the terms of the Agreement.

6 9. All persons who meet the definition of the Settlement Class and who wish to  
7 exclude themselves from the Settlement Class must submit their Request for Exclusion in writing,  
8 identifying the case name *Gross v. Symantec Corp., et al.*, and state the name, address and  
9 telephone number of the Settlement Class Member(s) seeking exclusion as well as the email  
10 address the Settlement Class Member(s) believes was used to purchase, register or activate the  
11 Software Products purchased. Each Request for Exclusion must also be physically signed with a  
12 statement to the effect that: "I/We hereby request to be excluded from the proposed Settlement  
13 Class in *Gross v. Symantec Corp., et al.*" The request must be mailed to the Settlement  
14 Administrator at the address provided in the notice and postmarked no later than sixty (60) days  
15 following the date that the Settlement Class Notice is first disseminated to the Settlement Class. A  
16 Request for Exclusion that does not include all of the foregoing information, that is sent to an  
17 address other than the one designated in the notice, or that is not received within the time specified,  
18 shall be invalid and any person(s) serving such a request shall be deemed a member of the  
19 Settlement Class, and shall be bound as a Settlement Class Member(s) by the Settlement. The  
20 Settlement Administrator shall promptly forward copies of all Requests for Exclusion to Class  
21 Counsel and Defendants' Counsel.

22 10. Any member of the Settlement Class may comment in support of or in opposition to  
23 the Settlement; *provided, however*, that all comments and objections must be filed with the Court  
24 and received by Class Counsel and Defendants' Counsel prior to the Fairness Hearing. A  
25 Settlement Class Member who objects to the Settlement need not appear at the Fairness Hearing  
26 for his, her or its comment to be considered by the Court; however, all papers, briefs, pleadings, or  
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1 other documents that any objector would like the Court to consider (“Objections”) must be filed  
2 with the Court, with a copy postmarked to Class Counsel and Defendants’ Counsel, no later than  
3 sixty (60) days following the date that the Settlement Class Notice is first disseminated to the  
4 Settlement Class. All Objections shall include the caption *Gross v. Symantec Corp., et al.*, No.  
5 3:12-cv-00154-CRB, and provide: (i) the Settlement Class Member’s full name and current  
6 address; (ii) the email address the Settlement Class Member believes was used to purchase, register  
7 or activate the Software Products purchased, (iii) a signed declaration that he or she believes  
8 himself or herself to be a member of the Settlement Class; (iv) the specific grounds for the  
9 objection; (v) all documents or writings that such Settlement Class Member desires the Court to  
10 consider; and (vi) a notice of intention to appear at the Fairness Hearing (if any).

11 11. Any Settlement Class Member who fails to object in the manner prescribed herein  
12 shall be deemed to have waived his, her or its objections and forever be barred from making any  
13 such objections in this Action or in any other action or proceeding. While the declaration described  
14 in subparagraph 10(iii) is *prima facie* evidence that the objector is a member of the Settlement  
15 Class, Plaintiff or Defendants or both may take discovery regarding the matter, subject to Court  
16 approval. If a Settlement Class Member does not submit a written comment on the proposed  
17 Settlement or the application of Class Counsel for an incentive award and attorneys’ fees and  
18 expenses in accordance with the deadline and procedure set forth in the notice, and the Settlement  
19 Class Member is not granted relief by the Court, the Settlement Class Member will be deemed to  
20 have waived his, her or its right to be heard at the Fairness Hearing.

21 12. The Agreement and the proceedings and statements made pursuant to the  
22 Agreement or papers filed relating to the approval of the Agreement, and this Order, are not and  
23 shall not in any event be construed as, offered in evidence as, received in evidence as, and/or  
24 deemed to be evidence of a presumption, concession, or an admission of any kind by any of the  
25 Parties of (i) the truth of any fact alleged or the validity of any claim or defense that has been,  
26 could have been, or in the future might be asserted in the Action, any other litigation, court of law  
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1 or equity, proceeding, arbitration, tribunal, investigation, government action, administrative  
 2 proceeding, or other forum, or (ii) any liability, responsibility, fault, wrongdoing, or otherwise of  
 3 the Parties. Defendants have denied and continue to deny the claims asserted by Plaintiff. Nothing  
 4 contained herein shall be construed to prevent the Parties from offering the Agreement into  
 5 evidence for the purposes of enforcement of the Agreement.

6 13. The certification of the Settlement Class shall be binding only with respect to the  
 7 settlement of the Action. In the event that the Agreement is terminated pursuant to its terms or is  
 8 not approved in all material respects by the Court, or such approval is reversed, vacated, or  
 9 modified in any material respect by this or any other court, the certification of the Settlement Class  
 10 shall be deemed vacated, the Action shall proceed as if the Settlement Class had never been  
 11 certified (including Defendants' right to oppose any subsequent motion for class certification), and  
 12 no reference to the Settlement Class, the Agreement, or any documents, communications, or  
 13 negotiations related in any way thereto shall be made for any purpose.

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 15 **IT IS SO ORDERED** this 28<sup>th</sup> day of May, 2013.

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 18 HONORABLE CHARLES  
 19 UNITED STATES

